

1 INTERIM STUDY PROPOSAL 2021-018

2 State of Arkansas

As Engrossed: H3/18/21

3 93rd General Assembly

A Bill

4 Regular Session, 2021

HOUSE BILL 1673

5
6 By: Representatives A. Collins, *M. Hodges*

7 Filed with: House Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9 AN ACT CONCERNING A DEFENDANT'S ABILITY OR INABILITY
10 TO PAY A FINE OR FEE; AND FOR OTHER PURPOSES.
11

Subtitle

12 CONCERNING A DEFENDANT'S ABILITY OR
13 INABILITY TO PAY A FINE OR FEE.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 16-13-701 is amended to read as follows:
22 16-13-701. Scope – ~~Definition~~ Definitions.

23 (a) The procedures established by this subchapter shall apply to the
24 assessment and collection of all fines, however designated, imposed by
25 circuit courts and district courts for criminal convictions, traffic
26 convictions, civil violations, and juvenile delinquency adjudications and
27 shall be utilized to obtain prompt and full payment of all fines.

28 (b) As used in this subchapter, ~~"fine"~~:

29 (1) "Ability to pay inquiry" means a court inquiry sufficient to
30 determine whether a defendant is able to pay a fine and includes without
31 limitation inquiry into the defendant's income, expenses, and liquid assets;

32 (2) "Able to pay" means that the resources of the defendant are
33 sufficient to pay a fine and provide the defendant and his or her dependents
34 with a reasonable subsistence compatible with health and decency; and

35 (3) "Fine" means a monetary penalty imposed by a court,
36 including without limitation:

- 1 ~~(1)~~(A) A monetary fine;
- 2 ~~(2)~~(B) Court costs;
- 3 ~~(3)~~(C) Court-ordered restitution;
- 4 ~~(4)~~(D) Probation fees;
- 5 ~~(5)~~(E) Supervision fees;
- 6 ~~(6)~~(F) Public service supervisory fees; and
- 7 ~~(7)~~(G) Other court-ordered fees.

8
9 *SECTION 2. Arkansas Code § 16-13-702 is amended to read as follows:*
10 *16-13-702. Imposition of fine – Ability-to-pay inquiry – Immediate*
11 *payment generally required.*

12 *(a)(1)(A) Notwithstanding any other mandatory sentencing requirement*
13 *under law, a fine shall not be imposed in a district court before an ability-*
14 *to-pay inquiry is conducted by the district court unless the defendant waives*
15 *the ability-to-pay inquiry and demonstrates that he or she is able to pay*
16 *under subdivision (a)(1)(B) of this section.*

17 *(B) A defendant may waive the ability-to-pay inquiry and*
18 *demonstrate that he or she is able to pay the fine by entering a plea of*
19 *guilty or nolo contendere and paying as a bond an amount equal to the fine in*
20 *lieu of appearing in district court as authorized by law.*

21 *(2) If a district court determines that a defendant is not able*
22 *to pay the fine, the district court may reduce the amount of the fine to an*
23 *amount that the defendant is able to pay or allow the defendant to perform*
24 *community service at an hourly rate not less than the state minimum wage as*
25 *credit against the fine or complete an educational program in lieu of paying*
26 *the fine.*

27 *(3) If the district court determines that the defendant is able*
28 *to pay the fine but that requiring the defendant to make immediate payment in*
29 *full would cause a severe and undue hardship for the defendant and the*
30 *defendant’s dependents, the court may authorize payment of the fine by means*
31 *of installment payments in accordance with § 16-13-704 if the court also*
32 *finds that the defendant is able to pay any installment fees that are*
33 *required by law.*

34 ~~*(a)(1) When a court has imposed a fine, as described in § 16-13-701,*~~
35 ~~*the imposition of such a fine constitutes*~~

1 **(b)(1) Except when a court has authorized installment payments in**
2 **accordance with § 16-13-704, the imposition of a fine constitutes an order to**
3 **pay the full amount of the fine in accordance with this subchapter.**

4 (2) ~~Following imposition of the fine~~ **When the full amount of a**
5 **fine is due following the imposition of a fine,** the court shall inform the
6 defendant that full payment of the fine is due immediately and shall inquire
7 of the defendant what arrangements he or she has made to comply with the
8 court's order to pay the fine.

9 (3) Without utilizing the provisions of § 16-13-704, the court
10 may allow the defendant a period of time, not to extend beyond the time of
11 the close of the clerk's office on the following day, within which to return
12 to the court and tender payment of the fine.

13 (4)(A)(i) If the defendant fails to appear as directed, the
14 court shall issue an order of arrest.

15 (ii) The arrest order shall be carried out by the
16 sheriff.

17 (B) The court may also, upon the defendant's failure to
18 appear, utilize any of the enforcement mechanisms authorized by this
19 subchapter.

20 ~~(5)(A) If the defendant claims an inability to pay the fine, the~~
21 ~~court shall inquire into the defendant's ability to pay and shall make a~~
22 ~~determination of the defendant's financial ability to pay the fine.~~

23 ~~(B) If the court finds that the defendant has the~~
24 ~~financial ability to make immediate payment of the fine in full, the court~~
25 ~~shall order him or her to pay the fine.~~

26 ~~(C) Failure or refusal to pay as ordered by the court~~
27 ~~shall subject the defendant to imprisonment, as provided in § 16-13-703.~~

28 ~~(b)(1)(c)(1)~~ **(1)** When a corporation is sentenced to pay a fine or costs,
29 it is the duty of the person authorized to make disbursement from the assets
30 of the corporation to pay the fine or costs.

31 (2) If such disbursements require approval of the board of
32 directors, it is the duty of the board to authorize disbursements to pay the
33 fine or costs.

34 (3) Failure to comply with the duties imposed by this subsection
35 shall render the person or directors subject to imprisonment under § 16-13-
36 703.

1 SECTION 3. Arkansas Code § 16-13-703 is amended to read as follows:
2 16-13-703. Imprisonment.

3 (a) When a defendant sentenced to pay a fine defaults in the payment
4 thereof, or of any installment, the court, upon its own motion or that of the
5 prosecuting attorney, may require him or her to show cause why he or she
6 should not be imprisoned for nonpayment.

7 (b) The court may issue a warrant of arrest or summons for his or her
8 appearance.

9 (c)(1) *Unless the defendant shows that his or her default was not*
10 *attributable to a purposeful refusal to obey the sentence of the court or to*
11 *a failure on his or her part to make a good-faith effort to obtain the funds*
12 *required for payment, the court may order the defendant imprisoned in the*
13 *county jail or other authorized institution designated by the court until the*
14 *fine or specified part thereof is paid.*

15 (2)(A) The period of imprisonment shall not exceed one (1) day
16 for each forty dollars (\$40.00) of the fine, thirty (30) days if the fine was
17 imposed upon conviction of a misdemeanor, or one (1) year if the fine was
18 imposed upon conviction of a felony, whichever is the shorter period.

19 (B) The total amount of fines owed shall not automatically
20 be reduced by the period of imprisonment, but the court may credit forty
21 dollars (\$40.00) for each day of imprisonment against the total fine,
22 excluding any amount owed for restitution, the defendant has been sentenced
23 to pay.

24 (3) This subsection is in addition to the revocation options
25 contained in § 16-93-308.

26 (4) If the court rejects a defendant's claim that his or her
27 default was not attributable to a purposeful refusal to obey the sentence of
28 the court or to a failure on his or her part to make a good-faith effort to
29 obtain the funds required for payment of the fine, the docket shall include a
30 written explanation of the basis for the determination of the court.

31 (d) If the court determines that the default in payment of the fine is
32 not attributable to the causes specified in subsection (c) of this section,
33 the court may enter an order allowing the defendant additional time for
34 payment, reducing the amount of each installment, ~~or~~ revoking the fine or the
35 unpaid portion ~~thereof~~ of the fine in whole or in part, allowing the
36 defendant to perform community service at an hourly rate not less than the

1 state minimum wage as a credit against the fine or complete an educational
2 program in lieu of paying the fine.

3
4 SECTION 4. Arkansas Code § 16-13-704 is amended to read as follows:
5 16-13-704. Installment payments—~~Definition.~~

6 (a)(1) ~~If the court concludes that the defendant has the ability to~~
7 ~~pay the fine, but that requiring the defendant to make immediate payment in~~
8 ~~full would cause a severe and undue hardship for the defendant and the~~
9 ~~defendant's dependents, the court may authorize payment of the fine by means~~
10 ~~of installment payments in accordance with this subchapter.~~

11 ~~(2)(A)~~ When a court authorizes payment of a fine by means of
12 installment payments, it shall issue, without a separate disclosure hearing,
13 an order that the fine be paid in full by a date certain and that in default
14 of payment, the defendant must appear in court to explain the failure to pay.

15 ~~(B)(2)~~ In fixing the date of payment, the court shall issue an
16 order which will complete payment of the fine as promptly as possible without
17 creating a severe and undue hardship for the defendant and the defendant's
18 dependents.

19 (3) When a person is authorized to pay a fine on an installment
20 basis, any court cost assessed under § 9-15-202(d) or § 16-10-305(h) shall be
21 collected from the initial installment payment first.

22 (b)(1)(A) In addition to the fine and any other assessments authorized
23 by this subchapter, an installment fee of five dollars (\$5.00) per month
24 shall be assessed on each person who is authorized to pay a fine on an
25 installment basis.

26 (B) This fee shall be collected in full each month in
27 which a defendant makes an installment payment.

28 (C) This fee shall accrue each month that a defendant does
29 not make an installment payment and the fine has not been paid in full.

30 (2)(A)(i) One-half ($\frac{1}{2}$) of the installment fee collected in
31 circuit court shall be remitted by the tenth day of each month to the
32 Administration of Justice Funds Section of the Office of Administrative
33 Services of the Department of Finance and Administration, on a form provided
34 by that office, for deposit into the Judicial Fine Collection Enhancement
35 Fund established by § 16-13-712.

1 (ii) The other half of the installment fee shall be
2 remitted by the tenth day of each month to the county treasurer to be
3 deposited into a fund entitled the "circuit court automation fund" to be used
4 solely for circuit court-related technology.

5 (B)(i) Expenditures from the circuit court automation fund
6 shall be approved by the administrative circuit judge of each judicial
7 circuit and shall be authorized and paid under the state laws governing the
8 appropriation and payment of county expenditures.

9 (ii) Expenditures may be made for indirect expenses
10 related to implementation of new court-related technology, including overtime
11 pay, personnel or travel expenses, and technology-related supplies.

12 (iii) Funds in each county in a judicial district
13 may be pooled for expenditure pursuant to a circuit-wide technology plan
14 approved by the administrative circuit judge.

15 (3)(A) One-half ($\frac{1}{2}$) of the installment fee collected in district
16 court shall be remitted by the tenth day of each month to the Administration
17 of Justice Funds Section, on a form provided by ~~that~~ the section, for deposit
18 into the Judicial Fine Collection Enhancement Fund established by § 16-13-
19 712.

20 (B) The other half of the installment fee collected in
21 district court shall be remitted by the tenth day of each month to the city
22 treasurer of the city in which the district court is located to be deposited
23 into a fund entitled the "district court automation fund" to be used solely
24 for district court-related technology.

25 (C) In any district court which is funded solely by the
26 county, the other half of ~~this~~ the installment fee shall be remitted by the
27 tenth day of each month to the county treasurer of the county in which the
28 district court is located to be deposited into the district court automation
29 fund to be used solely for district court-related technology.

30 (D)(i) Expenditures from the district court automation
31 fund shall be approved by a district judge and shall be authorized and paid
32 under state laws governing the appropriation and payment of county or
33 municipal expenditures by the governing body or, if applicable, governing
34 bodies, that contribute to the expenses of a district court.

1 (ii) Expenditures may be made for indirect expenses
2 related to implementation of new court-related technology, including overtime
3 pay, personnel or travel expenses, and technology-related supplies.

4 (E)(i) In circuit court only, an installment fee of an
5 additional five dollars (\$5.00) per month shall also be assessed on the first
6 day of each month on each person who is ordered to pay a fine on an
7 installment basis with the additional five dollars (\$5.00) to be remitted to
8 the collecting official to be used to defray the cost of fine collection.

9 (ii) In district court only, an installment fee of
10 an additional five dollars (\$5.00) per month shall also be assessed on the
11 first day of each month on each person who is ordered to pay a fine on an
12 installment basis with the additional five dollars (\$5.00) to be remitted by
13 the tenth day of each month to the Administration of Justice Funds Section on
14 a form provided by ~~that~~ the section for deposit into the State Administration
15 of Justice Fund.

16 (c) Any defendant who has been authorized by the court to pay a fine
17 by installments shall be considered to have irrevocably appointed the clerk
18 of the court as his or her agent upon whom all papers affecting his or her
19 liability may be served, and the clerk shall ~~forthwith~~ immediately notify the
20 defendant ~~thereof of papers affecting the defendant's liability~~ by ordinary
21 mail at his or her last known address.

22 ~~(d) "Ability to pay" means that the resources of the defendant,~~
23 ~~including all available income and resources, are sufficient to pay the fine~~
24 ~~and provide the defendant and his or her dependents with a reasonable~~
25 ~~subsistence compatible with health and decency.~~

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27
28 /s/A. Collins
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31 Referred requested by the Arkansas House of Representatives

32 Prepared by: MBM/KFW
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